

(Catalog of Federal Domestic Assistance No. 83.100, *Food Insurance.")

Dated: June 22, 1995.

Richard T. Moore,

Associate Director for Mitigation.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95-90; FCC 95-226]

Broadcast Services; Network/Affiliate Rule; Advertising

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice of Proposed Rulemaking proposes to re-examine the Commission's rules prohibiting a broadcast television licensee from entering into agreements with a network that limits the licensee's ability to alter its advertising rates and from being represented for the sale of advertising by a network with which it is affiliated. This action is needed to determine if the costs of these rules exceed their benefits.

DATES: Comments are due by August 28, 1995, and reply comments are due by September 27, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Paul Gordon (202-776-1653) or Tracy Waldon (202-739-0769), Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making* in MM Docket No. 95-90, adopted June 14, 1995 and released June 14, 1995. The complete text of this *NPRM* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, N.W., Suite 140, Washington, DC 20037.

Synopsis of Notice of Proposed Rule Making

1. With this *Notice of Proposed Rule Making (NPRM)*, the Commission continues its reexamination of the rules regulating broadcast television network/affiliate relationships in light of changes in the video marketplace. This *NPRM* takes a fresh look at 47 CFR 73.658 (h) and (i) (the Commission's "network

control of station advertising rates" rule and the "network advertising representation" rule, respectively). Section 73.658(h) prohibits agreements by which a network can influence or control the rates its affiliates set for the sale of their non-network broadcast time, and Section 73.658(i) prohibits broadcast television affiliates that are not owned by their networks from being represented by their networks for the sale of non-network advertising time. Both rules address station relationships with any broadcast television network, *i.e.*, any organization that provides and identical program to be broadcast simultaneously by two or more stations.

2. In reconsidering these rules, our central focus is on whether they continue to effectively serve this Commission's cornerstone interests of promoting diversity and competition. In this *NPRM*, after first reviewing the initial premises for these rules, we will look at the changes in the competitive environment over the years since the rules were adopted, and we will consider the current marketplace in which they operate. We will inquire whether networks would have the capability and the incentive to exercise undue market or bargaining power in the absence of these rules and will examine public interest

3. The network rules governing control of station rates and network advertising representation were originally adopted to protect the ability of affiliates to serve as viable, independent sources of programming, and to foster competition in the provision of advertising. As the Commission stated in 1941, "[c]ompetition between stations in the same community inures to the public good because only by attracting and holding listeners can a broadcast station successfully compete for advertisers. Competition for advertisers[,] which means competition for listeners[,] necessarily results in rivalry between stations to broadcast programs calculated to attract and hold listeners, which necessarily results in the improvement of the quality of their program service. This is the essence of the American system of broadcasting."¹ The Commission still believes, fifty years later, that healthy and vigorously competitive television advertising markets are in the public interest.

4. Having discussed why network influence over national spot advertising rates implicates our public interest

concerns, we turn to the practical questions of whether networks, under current market conditions, have the ability to exercise this influence, and whether they would choose to exercise it. The first question asks the degree to which a network could pressure its affiliates to act in a manner that benefits the network, but which may not be in the best interests of either the public or the licensee. The second question asks whether a network, even if it had such power, would have any incentive to exercise it. Finally, we request comment on whether the existing rules effectively perform their functions and whether elimination or modification of the rules would serve the public interest.

5. The public interest may be harmed if networks possess sufficient bargaining power over their affiliates such that exercise of this bargaining power would result in reductions of affiliate advertising revenues significant enough to inhibit the affiliate's ability to present programming that best serves its community. In order to assess whether networks today have a substantial degree of bargaining power with respect to their affiliates, we must define the relevant alternatives available to the two parties. To the extent that an affiliate has alternative opportunities to affiliate with a given network, network bargaining power could be reduced. In the same manner, it is also presumed that the more potential affiliates in a market, the more bargaining power the network will have.

6. We ask parties to comment on whether, and if so the extent to which, the balance of bargaining power has shifted toward affiliates in the years since these advertising rules were promulgated, and what effect the current balance of bargaining power has on our related public interest concerns of diversity and competition.

7. Even if a network has undue bargaining power over its affiliates, it may not have the incentive or ability to exercise that bargaining power to influence national video advertising rates in a way that would harm the public interest. Presumably, a network would find it in its interest to manipulate the national spot advertising rates of its affiliates only if it could earn higher profits by doing so. Whether a network could profit from this activity depends on the availability of other sources of advertising time to which advertisers can turn that are "reasonably interchangeable" with network advertising time. Understanding the goals of advertisers and the role of the national advertising representatives is critical in determining whether national spot advertisements are reasonably

¹ *Report on Chain Broadcasting*, Commission Order No. 37; Docket 5060, at 47, quoting *Spartanburg Advertising Co.*, Docket No. 5451, (January 9, 1940).

interchangeable substitutes for network advertisements. We must also consider whether there are products, in addition to national spot advertisements, that might substitute for broadcast television network advertising. If these other products provide competitive alternatives to network and national spot advertisements, the ability of a network to adversely influence rates in the national video advertising market will be substantially diminished.

8. In this regard, we propose to use the same analytical framework as in our pending television ownership proceeding.² In that item, we sought comment on whether the advertising time supplied by broadcast television networks, program syndicators, cable networks, and perhaps cable multiple system operators were reasonably interchangeable. We noted that the amounts of advertising time sold by other suppliers, such as direct broadcast satellite, wireless cable, or video dialtone program providers, were too small to have an appreciable effect on national broadcast advertising.

9. The *Report on Chain Broadcasting* argued that a network would exert pressure on its affiliates to raise their national spot ad rates so as to make network ads more attractive to advertisers, and thus more profitable. In this way, the network's profits would increase at the expense of its affiliates' profits. The 1980 *Network Inquiry Report*³ argued that a network and its affiliates together had incentives to manipulate the network and national spot advertising rates so that all parties' profits increased. Under either of these scenarios, if networks or networks and their affiliates together have the incentive and the market power to manipulate national video advertising rates to their advantage, the Commission's goals of diversity and competition could be adversely affected in the absence of the rules.

10. The ability of a network or a network and its affiliates to influence national video advertising rates depends again upon the availability of reasonably interchangeable substitutes. If we were to conclude on the basis of the record that each network's advertising time competes vigorously with: (1) the advertising time of the other networks; (2) the advertising time for national spot ads sold by affiliates and independent stations; and (3) advertising time offered by syndicators and cable networks, then

networks, either with or without their affiliates, will likely be unable to affect prices significantly in the national video advertising market. Under this scenario, if a network, or a network and its affiliates, were to attempt to raise their advertising rates above competitive levels, national advertisers would have several alternative suppliers to go to, and they would likely switch their patronage to these alternatives. We request comment on the ability of advertisers to switch to these alternative advertising providers and the resulting effect on station revenues. Commenters should focus on the degree to which these potential and actual competitors limit the ability of a network and/or its affiliates from profitably raising national television advertising rates above competitive levels.

11. Alternatively, if we were to conclude on the basis of the record that networks face few competitors in the national video advertising market other than each other and broadcast television stations (through national spot sales), we must still determine whether a network, or a network and its affiliates, could affect national television advertising rates in a manner that should concern us. Including only these competitors in the relevant market, we seek comment on whether any network, or a network and its affiliates acting in concert, could adversely affect national video advertising rates.

12. Finally, the record that we develop in this proceeding may indicate that network and national spot advertisements do not compete for the same advertisers. Should that be the case, changes in the rates for national spot advertisements will likely have no impact on the demand for network advertising and, consequently, no impact on network advertising rates. Such a finding would lead us to question the continued need for our advertising rules. We seek comment on what basis if any exists that would support retention of our advertising rules if we determine that network advertising time and national spot advertising time do not compete with each other for the same advertisers.

13. We also seek comment and information on the nature and extent of the services currently provided by national television advertising representatives. If general industry practice is for a television licensee to instruct the representative what rates to charge (leaving the latter no discretion to alter them), we question what harm there would be in allowing networks to represent their affiliates. On the other hand, licensees might generally provide their representatives a range of rates

within which to charge advertisers, thereby giving the representatives some latitude in managing the stations' transactions. We ask whether this would facilitate the adverse consequences in the national television advertising market and the resulting public interest concerns that were previously discussed.

14. Finally, we must address the question of whether our rules effectively prevent the harms they were designed to redress. Can networks currently influence national spot advertising rates indirectly, by using mechanisms other than possible influence or control over affiliates' rates? For example, since a network currently can control the amount of national spot time its affiliates have available to sell during network programming, does this allow the network indirectly to control the affiliates' national spot rates? If we find that networks, with or without their affiliates, can easily circumvent the advertising rules, then eliminating those rules would appear to cause no additional harm.

15. Whether we repeal, modify, or retain the prohibitions on network control of station advertising rates and network representation of affiliates in the advertising market depends on the nature of the competitive advertising interrelationships among the various video program providers. Should the record indicate that neither television broadcast networks nor networks and their affiliates have the ability or incentive to manipulate the market price for network or national spot television advertising time, we would consider eliminating or modifying the rules if the record indicates that they are ineffective in correcting the public interest harm they were designed to remedy. On the other hand, should we determine that networks, or networks and their affiliates, have the ability and incentive to manipulate the market price for network or national spot television advertising time, and that these rules effectively address any resulting public interest harm, we would consider retaining the rules.

16. However, the record might indicate that we should eliminate one rule, but not the other. For example, we might determine on the basis of the record established that networks, acting as station advertising representatives, in fact have no influence over national spot rates of the stations they represent. If these representatives have no ability to affect their clients' rates, we would likely be inclined to eliminate the rule prohibiting network representation of affiliates in the national spot advertising market, even though we may wish to

² Further Notice of Proposed Rule Making in MM Docket 91-221, 60 FR 6490 (Feb 2, 1995).

³ Network Inquiry Special Staff, *New Television Networks: Entry, Jurisdiction, Ownership and Regulation, Final Report*, (October 1990).

retain the rule prohibiting network control of station advertising rates. We ask for comment on the circumstance under which it might be appropriate to repeal one rule but retain the other.

Administrative Matters

17. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR §§ 1.415 and 1.419, interested parties may file comments on or before August 28, 1995, and reply comments on or before September 27, 1995. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. 20554.

18. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission Rules. See generally 47 CFR §§ 1.1202, 1.1203, and 1.1206(a).

Initial Regulatory Flexibility Analysis

19. *Reason for the Action:* This proceeding was initiated to review and update the Commission's Rules concerning network control of station advertising rates and affiliate advertising representation by networks in light of changes in the video programming industry.

20. *Objective of this Action:* This Notice is intended to reexamine the Commission's rules regulating broadcast television stations' sale of advertising.

21. *Legal Basis:* Authority for the actions proposed in this Notice may be found in Sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154 and 303.

22. *Recording, Recordkeeping, and Other Compliance Requirements Inherent in the Proposed Rule:* None.

23. *Federal Rules that Overlap, Duplicate, or Conflict with the Proposed Rules:* None.

24. *Description, Potential Impact, and Number of Small Entities Involved:* Approximately 1,500 existing television broadcasters of all sizes may be affected by the proposals contained in this decision.

25. *Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the Stated Objectives:* The proposals contained in this NPRM are intended to simplify and ease the regulatory burden currently placed on commercial television broadcasters.

26. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared the above Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of this Notice of Proposed Rule Making, but they must have a separate and distinct heading designating them as responses to IRFA. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

27. This Notice of Proposed Rule Making is issued pursuant to authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303.

List of Subjects 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

William F. Caton,
Acting Secretary.

[FR Doc. 95-16374 Filed 7-3-95; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. 94-30, Notice 3]

RIN 2127-AF17

Consumer Information Regulations Uniform Tire Quality Grading Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Supplemental notice of proposed rulemaking; extension of comment period; notice of public meeting.

SUMMARY: On May 24, 1995, NHTSA published a notice of proposed rulemaking (NPRM) to amend the Uniform Tire Quality Grading Standards (UTQGS). Pursuant to requests from several tire manufacturers, NHTSA announces an extension of the period for submitting written comments on the NPRM from July 10, 1995 to August 14, 1995. The agency also announces the holding of a public meeting to supplement the written comments. Finally, NHTSA proposes an additional calculation to supplement the proposed rolling resistance regression equation so that the equation can be used to calculate a specific rolling resistance coefficient.

DATES: *Public meeting and copies of oral testimony:* The public meeting will be held July 24, 1995, beginning at 9 a.m. Those wishing to make oral presentations should contact Mr. Orron Kee at the address or telephone number listed below, and submit copies of their planned testimony by July 20, 1995.

Written comments: Written comments on the May 24, 1995 NPRM and this SNPRM must be received on or before August 14, 1995.

Proposed Effective Date: If adopted, the amendments proposed in this notice would become effective one year after date of publication of the final rule in the **Federal Register**.

ADDRESSES: *Public Meeting:* The meeting will be held in Room 2230 Nassif Building, 400 Seventh Street, S.W., Washington, D.C.

Written Comments: Comments on the NPRM and SNPRM should refer to Docket No. 94-30; Not. 2 or the docket and notice number shown above, and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Room 5111, Washington, DC 20590. Docket room hours are from 9:30 a.m. to 4 p.m., Monday through Friday.

Written copies of oral testimony: Written copies of oral testimony for the meeting should be provided to Mr. Orron Kee at the address below.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Market Incentives, Office of the Associate Administrator for Rulemaking, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Room 5320, Washington, DC 20590, telephone (202) 366-0846.

SUPPLEMENTARY INFORMATION:

Background

In the May 24, 1995 **Federal Register**, NHTSA published a notice of proposed rulemaking (NPRM) to amend the Uniform Tire Quality Grading Standards (UTQGS)(49 CFR 575.104) to: Revise the